UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M.L. and B.L., individually,
and on behalf of J.L. a minor,

Plaintiffs,

-against-

THE NEW YORK CITY DEPARTMENT
OF EDUCATION,

Defendant.

COMPLAINT

ECF

Case No.:

Hon.

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December 15, 2016

COMPLAINT

Plaintiffs, M.L. and B.L., individually and on behalf of their special needs child, J.L., (collectively referred to as "Plaintiffs"), for their Complaint against Defendant New York City Department of Education (hereinafter "DOE" of the "Department" or "defendant"), by their attorney Lawrence D. Weinberg, allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs are the parents of a disabled child and seek relief pursuant to the Individuals with Disabilities Education Improvement Act (formerly the Individuals with Disabilities Education Act), 20 U.S.C. § 1401, et seq. (hereafter the "IDEA).

2. Plaintiffs are the parents of a disabled child who was denied access to a free appropriate public education (hereafter referred to as "FAPE") in the 2014-2015 school year by the Defendant School District by way of its Committee on Special Education ("CSE").

3. The IDEA authorizes this Court to award reasonable attorneys' fees at market rates to parents of disabled children who prevail in actions or proceedings, 20 U.S.C. §1415(i)(3)(B).

4. Plaintiffs are the prevailing party in IDEA administrative proceedings that arose from a disagreement with the defendant regarding the Plaintiffs disabled child's eligibility for IDEA entitlements. In achieving prevailing party status, Plaintiffs obtained some or all the relief had requested through administrative proceedings.

5. Plaintiffs now seek reimbursement for reasonable attorneys' fees incurred in the administrative proceedings, which has been denied by defendant.

JURISDICTION AND VENUE

6. Jurisdiction of the U.S. District Court is invoked under 20 U.S.C. § 1415(i)(3)(B) providing for jurisdiction for this court to "award reasonable attorneys' fees." Jurisdiction is also conferred by 28 U.S.C. § 1331, providing for jurisdiction of all civil actions arising under the laws of the United States. This Court may order declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202. The Court has pendant jurisdiction to adjudicate any state claims, which may arise out of the same facts as the federal claims asserted herein pursuant to 28 U.S.C. § 1367.

7. Venue is properly laid in the United States District Court for the Southern District of New York, as authorized by 28 U.S.C. § 1391.

THE PARTIES

8. Plaintiff J.L. (hereinafter the "child") is a sixteen-year-old child and, therefore a minor. The child has been classified as a child with a disability, as that term is defined by 20 U.S.C. § 1401(3), and therefore, is entitled to receive free appropriate special education and related services from defendant the New York City Department of Education. Plaintiffs M.L. and B.L. (hereinafter individually the "parent" or collectively the "parents") are the parents and natural guardians of plaintiff child. (The child and parents are collectively referred to as the "plaintiffs.") At all relevant times plaintiffs resided and continue to reside in New York county, New York City, New York.

9. The child and the parents, are not expressly named within this complaint, because of the privacy provided in the federal IDEA Statute as well as the Family Educational Rights Privacy Act ("FERPA"), 20 U.S.C. §1232.

10. Defendant New York City Department of Education (hereinafter "DOE" or the "Department" or "defendant") is, and was at all times material, a corporate body,

created by Article 52 of the New York State Education Law, CLS Educ. Law § 2550 et seq., that manages and controls the educational affairs of the New York City public schools.

11. Defendant is the "local educational agency" as defined by 14 U.S.C. § 1401(19) and 34 C.F.R. § 300.28 responsible for providing the child with a free appropriate public education.

12. Defendant's principal place of business is located at 52 Chambers Street, New York County, New York City, New York. Defendant's principal place of business is located in the Southern District of New York.

13. Plaintiffs reside in defendant's school district. The DOE is responsible for providing a free, appropriate public education to all students with disabilities, including the child, who reside in the defendant's school district pursuant to statutory rights arising under the Federal IDEA statute, its implementing regulations, and the applicable Part 200 Regulations implemented in New York State, to the extent such regulations are not inconsistent with the IDEA statute.

FACTUAL ALLEGATIONS

14. Parents bring this action under the IDEA to recover reasonable attorneys' fees for the cost of maintaining an action under the IDEA.

15. The child has Learning Disorder Not Otherwise Specified and was classified as Other Health Impaired on the August 14, 2014 IEP, which was the IEP for the relevant time period. The classification of the child's disability is not in dispute.

16. The child requires special education and related services to accommodate these disabilities so that she/he can receive a free appropriate public education in defendant's schools.

17. The child is currently attending York Preparatory School [York] and has attended that school since September 2014.

18. On August 14, 2014, pursuant to the IDEA, a committee on special education (hereinafter "CSE") met and generated an IEP for the child.

19. Parents cooperated in all ways with the CSE.

20. Pursuant to 20 U.S.C. § 1415(f) and 8 N.Y.C.R.R. § 200.5(i), on September 9, 2014, parents initiated an administrative due process proceeding against the defendant, in order to secure reimbursement and other relief pursuant to the federal IDEA statute (hereinafter the "due process complaint").

21. The due process complaint requested tuition reimbursement for York.

22. Evidentiary hearings were held on November 10, 2014 and February 25, 2015

23. The IHO rendered an initial decision on November 12, 2015. The initial decision found in favor of the parents and ordered defendant to reimburse plaintiffs for J.L.'s attendance at York for the 2014-2015 school year.

24. The November 12, 2015 decision was not appealed.

25. On or about February 19, 2016, Plaintiffs' counsel submitted documents to defendant requesting that defendant pay attorneys' fees for the impartial hearing below. Documents submitted included a Notice of Claim, Letter to Defendant's Counsel, Letter to the NYC Comptroller, Timesheet, and Parent Authorization to seek fees.

26. On March 1, 2016, defendant acknowledged receipt of plaintiffs' February 19, 2016 submission and assigned an attorney to negotiate fees with parents' counsel.

27. On April 12, May 12, June 14, June 27, July 6, August 17, and August 30, 2016 Plaintiffs' counsel wrote counsel for the Defendant specifically seeking fees for this matter.

28. On November 28, 2016, defendant's counsel offered $13,414.50 to settle this matter. [The November 28, 2016 offer]. The November 28, 2016 offer was commensurate with dozens of other cases that plaintiffs' counsel had settled with defendant. The November 28, 2016 offer was accepted by parent's counsel.

29. After the offer was accepted, defendant's counsel wrote stating that the November 28, 2016 offer was made in error and that she meant to offer $11,368.00, but would in fact offer $11,500.00.

30. Plaintiffs' counsel then wrote to defendant's counsel stating that if the November 28, 2016 offer was not agreed to litigation would ensue. Defendant's counsel did not respond.

31. Defendant has acknowledged Plaintiffs as prevailing party but has refused to acknowledge they are entitled to reasonable attorneys' fees. Plaintiffs prevailed in every manner yet Defendant ignores both the State Review Officer mandate and IDEA provision for compensating parties who are wrongfully denied access to a free appropriate public education and forced to retain legal services to remedy the federal/State violations.

32. Upon receipt of the parent's demand for reasonable attorneys' fees, the Defendant, through its Counsel, refused to pay.

33. The attorney's hourly rate during the 2014-2015 school year was $ 480. The attorney has negotiated fees with defendant in the past and while negotiation has

reduced the total fee amount, defendant has never stated, suggested, or implied that the hourly rate was not reasonable. All documentation of the above expenditures and debts, including demand letters, has been provided to the defendant.

34. Plaintiff seeks reasonable attorneys' fees and costs in the amount of $18,996.00. Plaintiffs seek compensation for an additional 3.5 hours spent on attempts to recuperate fees and on preparation of this Complaint, and $400.00 in filing fees. The attorney's hourly rate is now $500.00. Again, all documentation and demand letters have been previously provided to the Defendant during attempts to resolve this without litigation.

35. Plaintiffs total fee demand is reasonable. That is, the attorney, Lawrence Weinberg has experience and expertise spanning nearly twenty years and is entitled to compensation at the hourly rate of $480 for work on the impartial hearing and $500 per hour for work on this action. The total number of hours billed is reasonable.

36. Plaintiffs have no administrative remedy to exhaust, as such administrative remedies have been exhausted as required by 34 C.F.R. § 516.

CAUSES OF ACTION

FIRST COUNT

PROCEDURAL REQUIREMENTS OF IDEA

37. Plaintiffs reiterate, repeat, and reaffirm each and every allegation set forth above as if fully set forth herein.

38. Plaintiff is the prevailing party in the administrative proceedings brought pursuant to the Individuals with Disabilities Education Act ("IDEA") because the hearing officer, in his/her decision, determined the .

39. Plaintiff is the prevailing party in the administrative proceedings and entitled to reasonable attorneys' fees pursuant to the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. §1415(i)(3)(B).

SECOND COUNT
BREACH OF CONTRACT

40. Plaintiffs reiterate, repeat, and reaffirm each and every allegation set forth above as if fully set forth herein.

41. Parties entered into a binding agreement or bargained-for exchange. Defendant has indicated its intention of non-performance in the bargain.

42. Defendant has caused plaintiffs damages.

PRAYER FOR RELIEF

Declare that Plaintiff is prevailing party in the administrative proceedings and entitled to an award of reasonable attorneys' fees under the Individuals with Disabilities Education Act, ("IDEA"), specifically 20 U.S.C. §1415(i)(3)(B).

Order immediate payment of reasonable attorneys' fees in the amount of $18,996.00 for prosecution of the parent's claim.

Or in the alternative order immediate payment of reasonable attorneys' fees in the amount of $13,414.50 for prosecution of the parent's claim.

Grant leave to plaintiffs to submit a statutory fee application.

Direct defendant to pay for the costs and expenses of maintaining this action, including reasonable attorneys' fees pursuant to 20 U.S.C. § 1415(i)(3)(B); and

Grant such other or further relief that the Court may deem just and proper.

Respectfully submitted,

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